

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**REPLY COMMENTS OF CENTURYLINK IN SUPPORT OF
PETITION FOR LIMITED STAY OF TRANSFORMATION ORDER YEARS 6 AND 7**

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PETITION FOR LIMITED STAY OF TRANSFORMATION ORDER YEARS 6 AND 7**

I. INTRODUCTION AND SUMMARY

CenturyLink, Inc. by and on behalf of its subsidiaries (“CenturyLink”) hereby replies to the comments filed in response to its Petition for Limited Stay of Transformation Order Years 6 and 7¹ (“Petition”) filed on April 11, 2017:

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, *aff’d sub nom., In re: FCC 11-161*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014),

The record demonstrates that the Commission should grant the Petition as expeditiously as possible. The majority of comments support the Petition and, indeed, supplement the record significantly regarding the irreparable harm that will follow if the stay is not granted and the other stated grounds for the Petition. Moreover, the few oppositions to the Petition actually support its grant as they exemplify one of the core reasons underlying the need for the stay – the fact that carriers throughout the industry are likely to take a variety of different approaches to the Section 51.907(g) requirements in the Year 6 annual tariff filing process. There is also no disagreement in the comments as to the criticality of the Commission getting the regulatory treatment of tandem services right – both for the Years 6 and 7 transition and for the precedent-setting impact this carries for the IP transition. Grant of the stay will also facilitate the Commission’s ongoing work to address the variety of issues left open in the intercarrier compensation portion of the *Transformation Order*’s Further Notice of Proposed Rulemaking (*ICC FNPRM*).

At bottom, the record demonstrates that grant of CenturyLink’s limited stay request is in the public interest and that the Petition otherwise easily demonstrates that the Commission’s customary legal standard for grant of a stay is satisfied.

II. DISCUSSION

A. The Comments Confirm CenturyLink’s Estimation Of The Harm That Will Follow If The Stay Is Not Granted.

The record confirms CenturyLink’s evaluation of the irreparable harm that will result if the stay requested is not granted.

petitions for rehearing en banc denied, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al.*) (*Transformation Order*).

CenturyLink's Petition discussed in detail its concerns about the massive confusion that will ensue in the annual tariff filing process for price cap ILECs and CLECs in Year 6 alone. This includes the likely high number of billing disputes that will follow and drain industry and FCC resources and the significant and extensive "re-implementation costs" for the industry and consumers that will result after the issues are sorted out – likely in the tariff review process.²

The Petition also detailed the irreversible competitive harm that will occur in Years 6/7 and beyond and the expected expansion of arbitrage schemes that have already been launched in anticipation of this transition that will occur.

Numerous comments confirm the legitimacy of CenturyLink's concerns for the Year 6 transition and thereafter. The Competitive Tandem Providers "agree with CenturyLink that the inevitable result of different interpretations of the rules will be a 'high number of billing disputes – leading to a further drain on industry and FCC resources.'"³ They also note: "Any uncertainty about the application of switched access rules provides IXCs an opportunity to challenge the enforceability of specific switched access tariffs, aggressively dispute charges, and in many cases engage in self-help by refusing to pay any amount for the switched access charges under dispute. Implementing these rules before resolving significant issues of applicability and interpretation would expose Competitive Tandem Providers, and many other carriers, to unreasonable risks of

² See Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition – as it Impacts a Subset of Tandem Switching and Transport Charges of CenturyLink, filed herein (Apr. 11, 2017), at 2-3; 5, 9-10 (Petition); the Petition was publicly noticed in WC Docket No. 10-90 on Apr. 24, 2017, DA 17-388.

³ Comments of West Telecom Services, LLC and Peerless Network, Inc. (May 4, 2017), p. 5 (quoting a Technologies Management, Inc. blog stating: "[CenturyLink's analysis] is not overstated – nor is it just a prediction. I am seeing confusion among carriers right now. And, the more I engage in Step 6/7 planning discussions, the more this disruptive uncertainty materializes.") (Competitive Tandem Provider's Comments).

business disruption, litigation, and potential financial exposure.”⁴ Cincinnati Bell similarly confirms CenturyLink’s concerns that, unless the relief is granted, the “irregularities” at issue “may spawn new arbitrage opportunities and could result in unintended consequences.”⁵ HAMR also expects that the current lack of clarity will “likely lead to tariffing and billing confusion.”⁶ Similarly, Peninsula Fiber Network warns that the likely different interpretations of the requirements at issue will “lead to costly, drawn-out billing disputes and disruption of important revenue flows.”⁷ And, Inteliquent states “chaos will be the inevitable result if different carriers adopt different interpretations of the rules . . . [and] that there is a likely harm to competition if the rules are interpreted to require different prices (including, in some cases, a price of zero) for functionally identical or similar services; and the public will benefit by preserving the *status quo* until these issues can be resolved.”⁸

In contrast, the oppositions either wholly ignore evidence of CenturyLink’s extensive discussions of the very real and irreparable harms that will result if the stay request is not granted⁹ or offer meek conclusory denials without discussing that record.¹⁰

⁴ *Id.*

⁵ Comments of Cincinnati Bell (filed May 3, 2017), p. 2 (Cincinnati Bell Comments).

⁶ Comments of HAMR Communications, LLC (filed May 4, 2017), p. 1 (HAMR Comments).

⁷ Comments of Peninsula Fiber Network, LLC (filed May 4, 2017), p. 2 (Peninsula Comments).

⁸ Comments of Inteliquent, Inc. (filed May 4, 2017), pp. 4-5 (Inteliquent Comments).

⁹ See Opposition of Sprint Corporation (filed May 4, 2017) (Sprint Opposition); Opposition of NCTA – The Internet & Television Association to CenturyLink Stay Petition (filed May 4, 2017) (NCTA Opposition).

¹⁰ Comments of AT&T in Opposition to CenturyLink Petition for Stay (filed May 4, 2017), p. 7 (AT&T Comments).

B. The Few Oppositions to the Petition Only Provide Further Evidence Of The Need For a Stay.

The few opposing comments filed in response to the Petition fail to demonstrate a basis for its denial. Indeed, a cursory review of the AT&T Opposition and the Sprint Opposition only further exemplifies the need for a stay. Both have a very firm view of how the Commission must interpret the Rule 51.907(g)(2) and Rule 51.907(h) “affiliates” language describing the tandem access charges intended to transition to \$0.0007 and then to zero in Years 6 and 7, respectively. According to AT&T, a stay is not required because “the Commission cannot reasonably read the rule to treat the Price Cap Carrier as the ‘affiliate’ of a non-price cap carrier that terminates the call to the end user.”¹¹ And, elsewhere it states that “it is clear that the Commission’s informal guidance¹² represents the most reasonable interpretation of Rule 51.907.”¹³ According to Sprint, a stay is not required because the Commission should clearly interpret the rule language as including “any type of entity that owns the subtending end office, including an ILEC, a CLEC, a wireless carrier, or a cable company.”¹⁴ This divide as to the scope of the “affiliates” language in the price cap carrier transition rules is precisely the reason a train wreck is likely coming in the

¹¹ AT&T Comments, p. 15.

¹² AT&T Comments, p. 13. AT&T does not dispute that the Commission’s informal guidance was as described in CenturyLink’s Petition: That tandem charges applicable where the tandem is owned by a price cap carrier and the end office is owned by another, affiliated price cap carrier transition to bill and keep. However, charges where the tandem is owned by a price cap carrier and the end office is owned by an affiliated CMRS carrier or CLEC do not transition to bill and keep. Petition, p. 6.

¹³ Nowhere does AT&T really explain why exactly this should follow based on the actual language of the rules. Instead, it relies heavily on a policy-based argument that this result makes sense because the Commission has clearly, in AT&T’s view, deemed that it is acceptable that end users of price cap carriers cover the cost of tandem services for traffic terminating to them while IXCs cover those costs for traffic terminating to CMRS end users. AT&T Opposition, p. 9.

¹⁴ Others join Sprint in interpreting “affiliates” in this same manner. *See e.g.*, Inteliquent, p. 2; (suggesting that, consistent with Section 153(2) of the Act, “affiliates” should mean “any corporate affiliate regardless of regulatory classification”); Competitive Tandem Providers, p. 3.

Year 6 transition. And, this only touches on the divide when it comes to how the rules apply to price cap carriers – it does not even begin to factor in the broad potential disparity of views when it comes to translating the price cap carrier rules to CLECs via the CLEC benchmark rule.¹⁵

C. All Commenting Parties Agree That The Most Important Thing Is That The Commission Get The Regulatory Treatment of Tandem Services Right - Now and In The IP Future.

There is also no disagreement in the comments as to the criticality of the Commission getting the regulatory treatment of tandem services right – both for the Years 6 and 7 transition and for the precedent-setting impact this carries for the IP transition. Indeed, the majority of comments echo CenturyLink’s contention that it is essential that the Commission get the issues around the intercarrier compensation treatment of tandem services right and that the full impact of the transition of even a subset of those services to bill and keep has not yet been adequately considered. Nor is there any real disagreement with CenturyLink’s suggested “two essential ingredients” for the intercarrier compensation treatment for tandem services going forward: (1) that all tandem providers (and providers of functionally equivalent intermediate IP network services) should be permitted to exist and to compete equally; and (2) that terminating carriers must offer direct termination if requested. By way of example, the Competitive Tandem Providers states that they “agree with CenturyLink that ‘a central and overarching goal must be a competitive market where all providers can compete under the same rules.’”¹⁶ Similarly, Cincinnati Bell urges the Commission, should it conclude “that it [] was intended that only some tandem access charges would be transitioned to zero,” to “revisit the wisdom of eliminating

¹⁵ Petition, pp. 7-8.

¹⁶ Competitive Tandem Provider’s Comments, p. 4.

tandem charges from some carriers and not others.”¹⁷ HAMR describes the Commission’s guidelines as appearing “to create competition-harming market asymmetries that warrant a thorough reevaluation.”¹⁸ Peninsula also cites the disparate treatment between incumbent and competitive tandem/transport providers as raising important questions about “the future of the tandem/transport market.”¹⁹ Inteliquent cites the “likely harm to competition if the rules are interpreted to require different prices (including, in some cases, a price of zero) for functionally identical or similar services,” the need to resolve “highly significant issues of applicability and interpretation,” and the inevitable harm that will ensue if the rules “take effect prematurely.”²⁰

Even the limited opposing comments support the ultimate public policy goals that a stay will enable. NCTA, in its opposition, states “We agree with CenturyLink that the Commission should address the tandem transport issues raised in the 2011 Further Notice of Proposed Rulemaking in a manner that treats all carriers the same.”²¹ And, AT&T states that it “agrees with CenturyLink’s claims in the Petition that, due to the lack of complete reform in intercarrier compensation, there are numerous ‘arbitrage schemes’ that seek to exploit the Commission’s inefficient, legacy framework.”²² AT&T also “agrees that the Commission should avoid ‘fundamental asymmetry’ in intercarrier compensation, and that, as the Commission has long recognized, such inefficiencies cause ‘competitive harm’ [and] agrees that the Commission

¹⁷ Cincinnati Bell Comments, pp. 2-3.

¹⁸ HAMR Comments, p. 2.

¹⁹ Peninsula Comments, p. 1.

²⁰ Inteliquent Comments, p. 5.

²¹ NCTA Opposition, p. 4.

²² AT&T Comments, p. 8.

must act promptly to issue rules that permit the use of a ‘competitive market where all providers can compete under the same rules’” [citations omitted].²³

D. Grant of the Stay Will Facilitate Prompt Completion of the Reform Issues Raised in the ICC FNPRM.

AT&T contends that a grant of the stay will slow down the Commission’s ICC reform effort and encourages the Commission to first address the variety of issues left open in the Transformation Order Further Notice of Proposed Rulemaking.²⁴ But, grant of the Petition will facilitate that result – as the issues raised in the Petition can and should be rolled into the broader work that can and should be completed on those overall issues. Moreover, grant of the stay will help ensure that, as that happens, the rules are competitively neutral and minimize arbitrage.

E. The Commission Clearly Has Authority to Grant The Requested Relief.

The majority of the comments also confirm CenturyLink’s view that these circumstances satisfy the Commission’s customary legal standard for a stay.²⁵ The limited oppositions do not make credible arguments to the contrary.

To begin with, the Petition clearly demonstrated that grant of CenturyLink’s limited stay request is in the public interest - and the additional record available following the initial comment round, as discussed above, only strengthens that conclusion.

²³ *Id.*, p. 8.

²⁴ *Id.*, p. 14, n.14.

²⁵ That standard, as noted in the Petition, is: (i) that the petitioner has a substantial prospect of prevailing on the merits; (ii) irreparable injury will otherwise occur, due to the unavailability of an adequate legal remedy; (iii) the threatened injury outweighs any possible injury to the opposing party; and (iv) issuing a stay will not disserve the public interest. *See Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir 1958).

As for the “substantial prospect of prevailing on the merits” element of the stay standard, the record is also even stronger on that point after the initial comment round. In the Petition, CenturyLink stated its intent to mount a future substantive challenge on the merits of the interpretation question. Under the circumstances, there are a variety of ways that challenge could be mounted, procedurally – for example, via challenges to future tariff filings, a declaratory ruling petition, or a petition for reconsideration. The Petition also clearly describes the substantial likelihood that the Commission or a court could find the expected interpretation of the applicable rule language to be unlawful as arbitrary and capricious. And, this conclusion is further buttressed by the indications of Sprint, Inteliquent and the Competitive Tandem Providers, in their comments, that they would challenge the expected interpretation of “affiliates.”²⁶

Section A, above, easily demonstrates the irreparable harm that will result if the stay is not granted – and simultaneously demonstrates that the threatened injury outweighs any possible injury to any opposing party.²⁷ Given the scope and magnitude of the disruption anticipated, these harms go well beyond that which subsequent monetary compensation or other legal remedy could overcome. And it is self-evident that these conclusions are not merely speculative – a fact that is confirmed by the chorus of supporting comments on these points.

The Commission should also reject AT&T’s specious contentions that it lacks authority to issue the requested stay since, because of the unusual context in which it arises, it is really an improper reconsideration/repeal request or improperly seeks an indefinite stay. The circumstances of the stay request *are* unusual, due only to the unusual nature of the annual tariff

²⁶ Competitive Tandem Provider’s Comments , p. 5; Inteliquent Comments, p. 3; Sprint Opposition, pp. 3-4.

²⁷ Indeed, no opposing party cites to any prospect of harm should the stay be granted.

filing process and the role that informal guidance can and must play in that process. But, this a typicality does not deprive the Commission of authority to act. To the contrary, it increases the urgency of the need for the Commission to act. And, each of AT&T's purported technical challenges to that authority is easily disposed of. Contrary to AT&T's contentions, grant of the stay would not change the status quo.²⁸ It will merely continue the status quo as it would simply leave all tandem services subject to the current regulatory treatment.²⁹ Nor would a grant of the stay repeal the as-yet-un-triggered Years 6 and 7 rules at issue.³⁰ It will merely stay their effectiveness until the Commission has had an opportunity to adequately weigh the critical public policy concerns at stake. Finally, there is no reason to think that a stay would last indefinitely.³¹ The Commission has the discretion authority to define an appropriate time period within which to act or could grant the stay as an interim measure pending its completion of its work addressing the issues around transport and edge that are already teed-up with a full record in the *ICC FNPRM*.

²⁸ AT&T Comments, pp. 4-5.

²⁹ This context is, thus, easily distinguishable from the authority cited by AT&T. *See* AT&T Comments at p. 5, n. 4 (citing Order, *Unbundled Access to Network Elements*, 20 FCC Rcd. 5413, ¶¶ 2-3 (WCB 2005)). In that Order, the Commission denied a request for a stay pending appeal where the it found that “the rules at issue maintain the Commission's preexisting policy allowing conversions” and therefore that it was a denial of a stay that would maintain the status quo).

³⁰ AT&T Comments, p. 6.

³¹ AT&T Comments, pp. 4-5.

III. CONCLUSION

For the foregoing reasons, CenturyLink respectfully submits that its limited stay request should be granted.

Respectfully submitted,

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